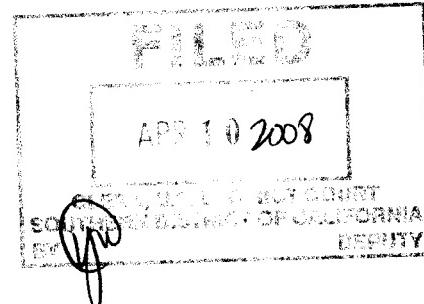


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8

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

08CR1123-WQH

11 UNITED STATES OF AMERICA,)	Magistrate Case No. 08MJ0801
12 v.)	STIPULATION OF FACT AND JOINT
13)	MOTION FOR RELEASE OF
14 JAVIER HERRERA-DIAZ (2),)	MATERIAL WITNESS(ES) AND
15)	ORDER THEREON
<hr/>		
(Pre-Indictment Fast-Track Program)		

16

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D.
 19 Moore, Assistant United States Attorney, and defendant JAVIER HERRERA-DIAZ, by and through
 20 and with the advice and consent of Jack J. Boltax, counsel for defendant, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
 26 and (v)(II).

27 //

28 JDM:rp:4/10/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **April 14, 2008**.

6 4. The material witnesses, Miguel Angel Avalos-Torres and Martin Mendez-Morales,
7 in this case:

- 8 a. Are aliens with no lawful right to enter or remain in the United States;
- 9 b. Entered or attempted to enter the United States illegally on or about
10 March 11, 2008;
- 11 c. Were found in a vehicle driven by ^{co-}defendant near Rancho San Diego,
12 California and that defendant knew or acted in reckless disregard of the fact that they were aliens
13 with no lawful right to enter or remain in the United States;
- 14 d. Were paying \$1,500-\$1,800 to others to be brought into the United States
15 illegally and/or transported illegally to their destination therein; and,
- 16 e. May be released and remanded immediately to the Department of Homeland
17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- 22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;
- 24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
27 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
United States Attorney

15 Dated: 4-10-08.


Karen P. Hewitt
JEFFREY D. MOORE
Assistant United States Attorney

16 Dated: 4-10-08.


Jeffrey D. Moore
JACK J. BOLTAX
Defense Counsel for Javier Herrera-Diaz

17 Dated: 4-10-08.


Javier Herrera-Diaz
JAVIER HERRERA-DIAZ
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4/10/08


Carol A. Johnson
United States Magistrate Judge